

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 423 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAILENDRA GOVINDLAL PARMAR

Versus

NEELAMBALA PITAMBERBHAI SANGHVI

Appearance:

MR JR NANA VATY with MR AR THACKER for petitioner
MR SURESH M SHAH for Respondent no.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 00/03/2000

C.A.V.JUDGEMENT

1. Heard learned counsel for the parties. The order dated 12.2.1999 of Civil Judge (S.D.) Jamnagar below Exh.11, the application filed by the petitioner gives rise cause to the petitioner to file this Civil Revision Application under Section 115 of the Civil Procedure Code in this Court. The application at Exh.11 was rejected under the impugned order.

2. The facts of this case in brief are that the petitioner entered into an agreement for purchase of disputed shop, situated on Pandit Nehru Road, opp. Amar Cinema, old city Survey No. G/2/11/1 and new sheet no. 237 and Survey No. 1706 with the respondent no.2 (name has been deleted) on 16th January. In pursuance of this agreement to sell, the respondent no.2 executed a registered sale deed in favour of the petitioner of the disputed shop on 23rd December, 1996.

3. The respondent no.1 filed Special Civil Suit No. 17 of 1996 in the Court of Civil Judge (S.D.), Jamnagar against the respondent no.2 for the specific performance of the contract for the sale of the disputed shop. This agreement is dated 4th February, 1993. In the suit aforesaid, the petitioner was not impleaded as a party. The petitioner has purchased the suit shop after giving public notice on 26th February, 1994. Both the petitioner and respondent no.1 resides at Jamnagar. The respondent no.2 did not remain present in the suit and the 4th Joint Civil Judge (S.D.), Jamnagar on 21st January, 1997 ex-parte decreed the suit in favour of the respondent no.1

4. The petitioner after purchase of the shop entered into possession thereof applied for the electric connection therein to the Gujarat Electricity Board. The Gujarat Electricity Board issued a letter in favour of the petitioner regarding electricity connection charges required to be paid by him. The electricity connection installed on the disputed shop and the petitioner is regularly paying electricity charges from 9th, December 1996 onwards. It is a case of the petitioner that the respondent nos. 1 and 2 colluded to defeat the right of the petitioner. After the judgement and decree of the Trial Court in Special Civil Suit No. 17 of 1996, the respondent no.1 filed Execution Petition in the Court of Civil Judge (S.D.), Jamnagar which is registered as Special Darkhast No. 13 of 1997. In this Special Darkhast the prayer is made that as per the decree of the Court, the respondent no.2 herein be directed to execute the documents in favour of the respondent no.1. The further prayer has been made to direct the respondent no.2 to hand over the possession of this disputed shop to him. In Darkhast proceedings the respondent no.1 made an application at Exh.5 and prayed therein that pending darkhast, therefore, the respondent no.2 be directed to maintain the status quo of the suit shop and further prayer has been made that the suit shop be sealed by affixing seal of the Court. The learned Executing Court

under its impugned order dated 14th August, 1997 granted the prayer made by the respondent no.1 in the application at Exh.5. The petitioner stated that when the seal was affixed by the bailiff of the Court on the disputed shop pursuant to the order of the Executing Court dated 14th August, 1997 below Exh.5 he was out of the station. On his returned back he came to know about the same and he approached to the Executing Court by making an application at Exh.5 praying therein to vacate the order dated 14th August, 1997. That application was came to be rejected under the order dated 12th February, 1999. Hence this Civil Revision Application.

5. Learned Advocate J.R.Nanavaty for the petitioner contended that the Executing Court has committed a serious error of jurisdiction in passing of the impugned order. The petitioner is in possession of the suit shop. He purchased the shop pursuant to the agreement to sell earlier in point of time then, the agreement to sell which is alleged to be executed by the respondent no.2 in favour of the respondent no.1. Learned counsel for the petitioner urges that otherwise also the petitioner is a bonafide purchaser without notice of the agreement to sell in between respondent no.1 and no.2. In the facts of this case, learned advocate for the petitioner contends that the provisions of Section 52 of Transfer of Property Act are not applicable. In his submission the decree is otherwise also not binding on the petitioner as he was not a party to the suit filed by the respondent no.1. Carrying this contention further learned advocate for the petitioner submits that the sale-deed of the shop in dispute has not been executed so far in favour of respondent no.1.

6. The petitioner is not a third party as what it is stated in the impugned order by the Executing Court. The petitioner is the owner of the suit shop and this order of affixing the Court seal on the suit shop is unwarranted and unjustified. Otherwise also, learned advocate for the petitioner contends that the petitioner has a right to file an appeal with leave of the Court against the judgment and decree of the Trial Court in the Special Suit. He has also right to file Review Application in the Executing Court when this order which is prejudicial to the petitioner has been made. In the facts of this case, this affixing of the Court seal on the suit shop is illegal.

7. Shri Shah learned advocate for the respondent no.1, on the other hand, contended that this Civil Revision Application is not maintainable at the instance

of the petitioner who is neither a party to the suit nor to execution proceedings. It is next contended that the petitioner has not challenged the order passed by the Executing Court below Exh.5 and without challenging the same he has no right to file this application for review of the same. On merits, the learned advocate for the respondent submits that the sale deed is not binding on respondent no.1 as it hits by the principle of lis pendente. The Trial Court has passed the decree in favour of the respondent no.1 and he has all the right to enjoy the fruits of the decree. To avoid any possibility of further transfer of the suit shop or induction of third person therein, the order passed below Exh.5 by the Executing Court is just, reasonable and equitable. The petitioner as per his own contention can file an appeal against the decree of the Trial Court, but that right has not been availed of. In execution, this objection cannot be raised. It is contended that the order below Exh.5 has been passed by the Court below after notice to the petitioner. He has chosen not to put appearance in the Executing Court. In rejoinder, Mr. Navavaty placed reliance on the provisions of Order 21 Rule 102 of the Civil Procedure Code.

8. I have given my thoughtful consideration to the rival considerations made by the learned counsel for the parties. If the facts of this case are correct, then it is clearly borne out there from that how the persons dealing in the sale of land make use of the Court for scoring their disputes. The respondent no.2 is making the money from both the sides. There are allegations from the side of the petitioner that the respondent nos. 1 and 2 are colluded, but possibility of collusion in between the petitioner and respondent no.2 also cannot be overruled. Consideration of the sale deed of the disputed shop executed in favour of the petitioner by respondent no.2 is Rs. 45,000/-. As per the judgement of the Trial Court, the respondent no.1 has to pay Rs. 1,12,2000/- as a sale consideration. The observation made by the Executing Court that the petitioner appears to have a trump card in the hands. Though nothing can be decided finally at that stage, but if we go by the facts of this case I fail to understand what for the petitioner has waited for long for the execution of the sale deed of the suit property. The agreement to sell dated 16th January, 1993 would have really been there and it would have been a genuine documents, the public notice for the purchase of disputed shop was given by the petitioner on 26th February, 1994 but thereafter also the sale deed was not got executed till 23rd December, 1996 i.e. for more than 2 years and 10 months. The sale consideration is

also a relevant fact. The petitioner has not challenged the judgement and decree of the Trial Court. He was certainly a person aggrieved of this judgement and decree and he may have a right of appeal against the same but he has to take any leave of the Court and this right has not been availed of. The matter is not ended here. Even the petitioner has not taken care to file a review application also. It is true that the respondent no.2 permitted the proceedings of the Special Civil Suit to go ex-parte against him, but from this nothing turned out in favour of the petitioner. After the decree, if the decree holder has a reasonable apprehension that the third party may deal with the suit property in a manner and fashion detrimental to the rights of the decree holder, the Court has very wide power under Section 151 of the Civil Procedure Code to grant appropriate interim relief, so that the Court process may not be abused or in the interest of justice, the suit property is to be protected. For the protection of the suit property the Executing Court can pass an appropriate and reasonable order in the interest of justice. Leaving apart the question whether the petitioner has purchased suit property or not one fact is very clear that he is not carrying on his business thereon. It is not the case of the petitioner before this Court that he is carrying on his business in the suit shop. The suit shop is lying closed and in case the Executing Court pass an order to keep it under the seal, it will not cause any prejudice to the petitioner. Leaving apart the fact that this case does not fall under any of the clauses (a), (b) and (c) of Sub-section 1 of the Section 115 of the Civil Procedure Code, otherwise also in case the impugned order is allowed to stand, it will not occasion any failure of justice or cause irreparable injury to him. The petitioner has an ample opportunity for the protection of his alleged right in the suit shop, but order impugned in the Civil Revision Application cannot be interfered with by this Court under Section 115 of the Civil Procedure Code. It is just and reasonable order which has been passed by the Executing Court to preserve and protect the suit property. In the result, this Civil Revision Application fails and same is dismissed. Rule is discharged. Interim relief, if any, granted by this Court stands vacated. In the facts of this case no order as to costs.

(S.K.Keshote,J)

(Vipul)